

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10
11

12 STAVROULAS PISTIOLAS,

13 Plaintiff,

CIV S-03-1755 MCE PAN

14 v.

15 JO ANNE B. BARNHART,
16 Commissioner of Social
Security,

Findings and Recommendation

17 Defendants.
18

—oOo—

19 Pursuant to 42 U.S.C. § 405(g), plaintiff requests this
20 court review defendant's decision denying plaintiff disability
21 benefits.

22 If the claimant meets eligibility requirements, the
23 Commissioner must decide if plaintiff was unable to engage in
24 "substantial gainful activity" because of a "medically
25 determinable physical or mental impairment" that "has lasted or
26 can be expected to last for a continuous period of not less than

1 12 months." 42 U.S.C. § 423(d)(1)(A). The commissioner makes
2 this determination by following a five-step analysis. First, the
3 claimant must not currently be working. 20 C.F.R. § 404.1520(b).
4 Second, the claimant must have a "severe" impairment. 20 C.F.R.
5 § 404.1520(c). Third, the medical evidence of the claimant's
6 impairment is compared to a list of impairments that are presumed
7 severe enough to preclude work; if the claimant's impairment
8 meets or equals one of the listed impairments, benefits are
9 awarded. 20 C.F.R. § 404.1520(d). Fourth, if the claimant can
10 do his past work benefits are denied. 20 C.F.R. § 404.1520(e).
11 Fifth, if the claimant cannot do his past work and, considering
12 the claimant's age, education, work experience, and residual
13 functional capacity, cannot do other work that exists in the
14 national economy, benefits are awarded. 20 C.F.R. § 404.1520(f).

15 Defendant found plaintiff had no severe impairment before
16 December 31, 1993, when she was last eligible, and denied the
17 application on that ground. Tr. 49.

18 This court must uphold the Secretary's determination that
19 a plaintiff is not disabled if the Commissioner applied the
20 proper legal standards and if the Secretary's findings are
21 supported by substantial evidence. Sanchez v. Secretary of
22 Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987).
23 The question is one of law. Gonzalez v. Sullivan, 914 F.2d 1197,
24 1200 (9th Cir. 1990). Substantial evidence means more than a
25 mere scintilla, Richardson v. Perales, 402 U.S. 389, 401 (1971),
26 but less than a preponderance. Bates v. Sullivan, 894 F.2d 1059,

1 1061 (9th Cir. 1990). It means such relevant evidence as a
2 reasonable mind might accept as adequate to support a conclusion.
3 Richardson, 402 U.S. at 401. The court cannot affirm the
4 Commissioner simply by isolating supporting evidence but must
5 consider the entire record, weighing evidence that undermines as
6 well as evidence that supports the Secretary's decision.
7 Gonzalez v. Sullivan, 914 F.2d at 1200. If substantial evidence
8 supports administrative findings, or if there is conflicting
9 evidence that will support a finding of either disability or
10 nondisability, the finding of the Commissioner is conclusive,
11 Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may
12 be set aside only if the proper legal standards were not applied
13 in weighing the evidence. Burkhart v. Bowen, 856 F.2d 1335, 1338
14 (9th Cir. 1988).

15 Plaintiff claims she was assaulted at work in August 1985
16 and thereafter suffered chronic dizziness diagnosed as postural
17 hypotension in January 1991, that beginning in February 1990 she
18 suffered disabling pain from degenerative changes in her lumbar
19 spine and that she was disabled before her insured status expired
20 in December 1993. She also claims defendant erroneously found
21 her subjective complaints were not credible because defendant
22 misunderstood her to say she quit work in 1985 (whereas in fact
23 she said she experienced dizziness since 1985 and quit work in
24 1988 when she sold the family business) which was inconsistent
25 with her earnings records.

26 Defendant carefully reviewed the medical records and

1 found no evidence that degenerative changes and a herniated disc
2 addressed by surgery in March 1990 were sufficiently severe to
3 preclude work for any 12-month period before expiration of her
4 insured status. Plaintiff points to no contradictory medical
5 evidence.

6 Defendant acknowledged that at the hearing plaintiff
7 testified she was unable to work because of dizziness. Defendant
8 did not credit the testimony, however, because "[s]he said that
9 she had been unable to work since 1985 but admitted that she quit
10 work in 1988" and because there were no records of treatment for
11 the injury received in 1985. Tr. 47.

12 It is not disputed that in 1985 plaintiff suffered injury
13 when she was assaulted by an unhappy job applicant. Assuming the
14 injury resulted in a medically determinable impairment that might
15 explain disabling dizziness, defendant could not reject
16 plaintiff's subjective complaints solely on the ground they are
17 unsupported by objective medical evidence but could find
18 plaintiff was not credible only for reasons, supported by the
19 record, that assure a reviewing court that a claimant's testimony
20 about the limitations imposed by pain is not arbitrary. Bunnell
21 v. Sullivan, 947 F.2d 341, 345-46 (9th Cir. 1991). Without
22 affirmative evidence of malingering, lacking here, there must be
23 specific, cogent reasons for disbelief and the reasons must be
24 clear and convincing. Morgan v. Apfel, 169 F.3d 595, 599 (9th
25 Cir. 1995).

26 Plaintiff testified that she and her husband owned a

1 bindery business that once employed 160 workers. Tr. 56-62. In
2 1985 an unhappy job applicant assaulted her. The assault left
3 her chronically dizzy. She was treated by Dr. Constantine
4 Glafkides who prescribed many medicines that provided no help.
5 Her husband continued to drive her to the bindery until 1988 when
6 they sold the business but the dizziness precluded her from
7 performing her past work.

8 There is nothing in plaintiff's account that impeaches
9 her credibility and the lack of medical records is the fault of
10 defendant for not developing the record by obtaining Dr.
11 Glafkides' records.

12 The decision should be reversed and remanded for further
13 proceedings consistent herewith.

14 These findings and recommendations are submitted to the
15 Honorable Morrison C. England, Jr., United States District Judge.
16 28 U.S.C. § 636(b)(1). Written objections may be filed within
17 ten days after being served with these findings and
18 recommendations. The document should be captioned "Objections to
19 Magistrate Judge's Findings and Recommendations." The failure to
20 file objections within the specified time may waive the right to
21 appeal the District Court's order. Martinez v. Ylst, 951 F.2d
22 1153 (9th Cir. 1991).

23 Dated: May 11, 2005.

24 /s/ Peter A. Nowinski

25 PETER A. NOWINSKI

26 Magistrate Judge